

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

AZ CORP COMMISSION
DOCKET CONTROL

COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

In the matter of:

DOCKET NO. S-20571A-07-0711

RICK MCCULLOUGH, a single man
individually and doing business as
MCCULLOUGH INSURED
INVESTMENTS

THE KODIAK INVESTMENT GROUP,
LLC, an Arizona limited liability company

ANITA GENEVA MCCULLOUGH (a/k/a
Anita G. Maestas, a single woman

Respondents.

**NOTICE OF OPPORTUNITY FOR HEARING
REGARDING PROPOSED ORDER TO
CEASE AND DESIST, ORDER FOR
RESTITUTION, ADMINISTRATIVE
PENALTIES AND OTHER AFFIRMATIVE
ACTION**

Arizona Corporation Commission

DOCKETED

DEC 31 2007

DOCKETED BY

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents Rick McCullough, a single man, individually and doing business as McCullough Insured Investments, The Kodiak Investment Group, LLC, an Arizona limited liability company, and Anita Geneva McCullough, a single woman, have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.

RESPONDENTS

2. Rick McCullough ("McCullough") is a single man residing in Phoenix, Arizona and doing business as McCullough Insured Investments ("McCullough Insured Investments").

3. The Kodiak Investment Group, LLC ("Kodiak") is an Arizona limited liability company whose principal place of business is in Phoenix, Arizona. McCullough is the Manager and sole Member of Kodiak.

4. McCullough, McCullough Insured Investments, and Kodiak may be referred to individually or, collectively, as "Respondents".

5. McCullough and Anita Geneva McCullough (a/k/a Anita Geneva Maestas) ("A. McCullough") were married December 7, 2001. A divorce decree was entered on December 27, 2006 dissolving their marriage.

6. At all relevant times, A. McCullough was the spouse of McCullough, and is joined in this action individually and under 44-2031(C) solely for purposes of determining the liability of the marital community.

7. At all relevant times, McCullough and A. McCullough were acting for their own benefit, and for the benefit or in furtherance of the marital community.

8. A. McCullough may be referred to as "Respondent Spouse."

III.

FACTS

9. CactusCash, Inc. (a/k/a Cactus Cash) ("CactusCash") was an Arizona corporation whose principal place of business was in Phoenix, Arizona. The Commission administratively

1 dissolved the entity on October 31, 2007 for failing to file an annual report. McCullough was the
2 President, Chief Executive Officer and sole Director of CactusCash.

3 10. CactusCash, at all relevant times, was licensed as a mortgage broker with the
4 Arizona Department of Financial Institutions. However, CactusCash is no longer licensed as a
5 mortgage broker.

6 11. From in or about September 2005 until October 2006, McCullough offered and
7 sold unregistered securities, in the form of promissory notes, within or from Arizona.

8 12. McCullough entered into promissory notes with at least four (4) investors ranging
9 in age from 65 to 88 years of age for a total amount of, at least, \$401,712.

10 13. McCullough represented to offerees and investors a real estate investment program
11 which offered investors monthly returns. McCullough asked offerees and investors to borrow funds
12 which he would use to invest in real estate. McCullough told offerees and investors to refinance
13 their home mortgages to obtain the necessary monies. McCullough promised offerees and investors
14 that he would repay the loan by making monthly payments.

15 14. At all relevant times, McCullough was a mortgage loan officer for CactusCash. As a
16 loan officer, McCullough's primary responsibility was to process residential home mortgage loan
17 applications.

18 15. McCullough solicited offerees and investors to refinance their home mortgage loans.
19 McCullough processed the mortgage loan applications for offerees and investors to refinance their
20 home mortgage loans.

21 16. Offerees and investors who sought to refinance their home mortgage loans paid an
22 origination fee associated with refinancing the loan. CactusCash received the fee(s) for processing
23 the mortgage loan. The fee was deposited into the CactusCash's bank account on which
24 McCullough and A. McCullough were the only signatories.

1 17. In most instances, the origination fee was five percent (5%) of the principal amount
2 of the new mortgage loan, which could be as much as \$8,000. In each instance, McCullough
3 deposited the origination fee into the bank account for CactusCash.

4 18. Soon after the offeree or investor began the application process to refinance their
5 home mortgage loan, McCullough asked them to loan him the funds they received from the loan
6 refinance ("McCullough loan" or "McCullough loans").

7 19. McCullough told offerees and investors that refinancing their existing home
8 mortgage loan to invest with McCullough, McCullough Insured Investments and/or Kodiak was in
9 their best interest because it would increase their income.

10 20. McCullough also promised offerees and investors high returns on their investment.
11 The amount of the return varied by investor and the term of the McCullough loan.

12 21. McCullough assured the offerees and investors that he would make monthly
13 payments to repay the McCullough loan until it was entirely repaid. McCullough was aware that, in
14 most instances, offerees and investors were unable to pay the increased amount of the new home
15 mortgage loan if McCullough failed to repay the McCullough loan.

16 22. In exchange for the McCullough loan, McCullough entered into promissory notes
17 with offerees and investors. McCullough entered into promissory notes with offerees and investors
18 as the sole proprietor of McCullough Insured Investments. McCullough also entered into promissory
19 notes on behalf of Kodiak. The promissory notes disclosed the principal amount borrowed, the
20 monthly payment amount, and the loan's maturity date.

21 23. McCullough promised offerees and investors that he, McCullough Insured
22 Investments, and/or Kodiak would repay the McCullough loans by depositing monthly loan
23 payments into the investor's personal bank accounts.

24 24. McCullough promised offerees and investors that he, McCullough Insured
25 Investments, and/or Kodiak would repay the McCullough loan usually 4-9 years from the date the
26 funds were borrowed.

3 26. McCullough used the funds of the McCullough loans to pay personal expenses. In
4 some instances, McCullough used the funds of the McCullough loans to make improvements to the
5 home he shared with A. McCullough during their marriage. A. McCullough solely owned the home
6 she shared with McCullough.

7 27. In at least one instance, McCullough commingled business funds with his personal
8 funds. McCullough transferred funds from McCullough Insured Investments and/or Kodiak bank
9 account into his personal bank account he held jointly with his wife, at the time, A. McCullough.

28. In another instance, McCullough transferred funds from McCullough Insured Investments bank account to Kodiak's bank account. McCullough later transferred the funds from the Kodiak account to his personal bank account.

VIOLATION OF A.R.S. § 44-1841

16 29. From on or about September 2005 until October 2006, Respondents offered or sold
17 securities in the form of promissory notes, within or from Arizona.

18 30. The securities referred to above were not registered pursuant to Articles 6 or 7 of the
19 Securities Act.

20 31. This conduct violates A.R.S. § 44-1841.

VIOLATION OF A.R.S. § 44-1842

24 32. From on or about September 2005 until October 2006, Respondents offered or sold
25 securities, in the form of promissory notes, within or from Arizona while not registered as dealers or
26 salesmen pursuant to Article 9 of the Securities Act.

d) McCullough told offerees and investors he would use the funds that he, McCullough Insured Investments and/or Kodiak borrowed to invest in real estate, when in fact he used the McCullough loan proceeds to pay personal expenses including making improvements to the residence he shared with Respondent Spouse.

35. This conduct violates A.R.S. § 44-1991.

VII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order Respondents to permanently cease and desist from violating the Securities Act, pursuant to A.R.S. §44-2032;
2. Order Respondents to take affirmative action to correct the conditions resulting from Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;
3. Order Respondents to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;
4. Order that the marital communities of Respondents and Respondent Spouse be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and
5. Order any other relief that the Commission deems appropriate.

VIII.

HEARING OPPORTUNITY

Each respondent including Respondent Spouses may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If a Respondent or a Respondent Spouse requests a hearing, the requesting respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity

1 for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona
2 Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may
3 be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web
4 site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

5 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin
6 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the
7 parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission
8 may, without a hearing, enter an order granting the relief requested by the Division in this Notice of
9 Opportunity for Hearing.

10 Persons with a disability may request a reasonable accommodation such as a sign language
11 interpreter, as well as request this document in an alternative format, by contacting Linda Hogan,
12 ADA Coordinator, voice phone number 602/542-3931, e-mail lhogan@azcc.gov. Requests should
13 be made as early as possible to allow time to arrange the accommodation.

14 IX.

15 ANSWER REQUIREMENT

16 Pursuant to A.A.C. R14-4-305, if a Respondent or a Respondent Spouse requests a hearing,
17 the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for
18 Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix,
19 Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions
20 may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet
21 web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

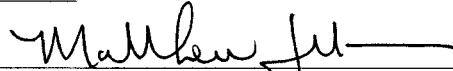
22 Additionally, the answering respondent must serve the Answer upon the Division.
23 Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-
24 delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix,
25 Arizona, 85007, addressed to Rachel F. Strachan.

1 The Answer shall contain an admission or denial of each allegation in this Notice and the
2 original signature of the answering respondent or respondent's attorney. A statement of a lack of
3 sufficient knowledge or information shall be considered a denial of an allegation. An allegation
4 not denied shall be considered admitted.

5 When the answering respondent intends in good faith to deny only a part or a qualification
6 of an allegation, the respondent shall specify that part or qualification of the allegation and shall
7 admit the remainder. Respondent waives any affirmative defense not raised in the answer.

8 The officer presiding over the hearing may grant relief from the requirement to file an
9 Answer for good cause shown.

10 Dated this 31 day of December, 2007.

11 

12 Matthew J. Neubert
13 Director of Securities

14 (rfs)